



**DEPARTMENT OF
FINANCE**

ARNOLD SCHWARZENEGGER, GOVERNOR

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February 24, 2005

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your Notice of Reconsideration, Briefing, and Hearing Schedule for Case No. 04-RL-9723-01 (97-TC-23, Standardized Testing and Reporting [STAR] Program) dated January 24, 2005, the Department of Finance respectfully submits the following comments regarding the issues specified in the Notice. Specifically, the Commission asked for opening briefs on the following issues:

- In light of federal statutes enacted and state court decisions rendered since the named statutes were enacted, is there a new program or higher level of service imposed on school districts within the meaning of Section 6, Article XIII B of the California Constitution, and if so, are there costs mandated by the State pursuant to Government Code Section 17514 and Government Code Section 17556?
- Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source?
- What is the period of reimbursement for the Commission's decision on reconsideration?

New program or higher level of service?

The STAR is not a new program. Prior to the No Child Left Behind Act of 2001 (NCLB), Public Law 107-110, the federal Title I program provisions under the Improving America's Schools Act (IASA) of 1994 required statewide systems of assessment and accountability for schools and districts participating in the Title I program. Assessment requirements contained in the IASA included: 1) the testing of all students in each of three grade spans (grades 3 through 5, 6 through 9, and 10 through 12); 2) the provision of reasonable adaptations and accommodations for students with special learning needs; and 3) that individual student assessment results be provided to parents. We therefore believe the STAR program was not a new program when it was enacted in 1997. While it may have resulted in a higher level of service as it evolved over time, the program itself is mandated by the federal statutes discussed in this letter, and has most recently evolved to fulfill the NCLB mandates discussed below.

The NCLB replaced the IASA in 2002, and required states to develop a system of assessments that meet specific criteria. Pursuant to Section 1111 of NCLB, each state, based on academic standards and academic assessments, is required to implement a single, statewide accountability system to assess the yearly progress of "all public elementary and secondary school students." NCLB also requires annual testing specifically in mathematics and reading in grades 3 through 8 and once in grades 9 through 12. States also must begin to assess students specifically in science beginning in 2005-06. Without such a system, a state would jeopardize the receipt of approximately \$4.3 billion *annually* in federal NCLB funds. We therefore believe this program is a federal mandate, as defined in Government Code

Section 17513 ("...where failure to enact that law or regulation to meet specific federal program or service requirements imposed upon the state would result in substantial monetary penalties or loss of funds to public or private persons in the state whether the federal law was enacted before or after the enactment of the state law, regulation, or executive order") and subsection (c) of Government Code Section 17556 ("The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.").

Have funds been provided to offset costs?

Yes. Notwithstanding our belief that this program is federally mandated, should the Commission disagree, the availability of offsetting funding, savings, or revenues must be considered. Additionally, should this be the case, state funds provided for the program should first offset against any costs resulting from activities found by the Commission to be state-mandated in excess of the federal statute. Since its inception, funding explicitly provided for the STAR program in the annual Budget Act from both state General Fund and federal sources are as follows:

Fiscal Year	General Fund	Federal Fund	Total
1998-1999	\$39,700		\$39,700
1999-2000	\$42,100		\$42,100
2000-2001	\$62,325		\$62,325
2001-2002	\$65,643		\$65,643
2002-2003	\$60,836	\$6,569	\$67,405
2003-2004	\$60,336	\$7,443	\$67,779
2004-2005	\$57,528	\$13,384	\$70,912

District Costs under IASA—The Commission's Statement of Decision on the original test claim makes no reference to the requirements of IASA or NCLB, or how the implementation of STAR interacts with federal law. As such, any STAR mandates should be adjusted to reflect federal testing requirements under IASA and NCLB.

The IASA required assessment and accountability programs for districts receiving Title I funds. In addition, federal law permitted the use of local assessments in satisfying these requirements, which were sufficiently loose that just about any system of assessment could meet the federal mandates. Federal law, however, did not require the state to pay for the assessment that was required by IASA. Instead, it permitted districts to purchase or develop local assessments for Title I if they met certain federal quality and other standards. As mentioned earlier, IASA required districts to test students in three grade spans. Section 1112 of IASA required districts to describe the high-quality assessments that would be used to measure student achievement (if there was no statewide assessment). Thus, the assessment requirement was a mandate on local districts—the Title I assessment requirement could be satisfied through a system of local

assessments that met federal standards. These local assessments would be developed or purchased by each district.

By the enactment of STAR, therefore, the State actually *reduced* district costs by directly paying for Title I required assessments, achieving economies of scale, and providing apportionments to districts based on the number of students tested. By requiring districts to use STAR for IASA and by paying for the assessment, the state relieved districts of the cost of purchasing or developing a qualifying local assessment. For this reason, should the Commission determine a mandate exists, it should require districts to identify the avoided costs of the Title I assessment requirement that resulted by state enactment of STAR or it should determine that the State reduced district Title 1 costs by the amount it cost the state for STAR. These savings would be counted against any other reimbursable costs for STAR.

District Costs under NCLB—The assessment requirements under NCLB are even more universal and more consistent with STAR. Under NCLB, states must test all children in grades 3 through 8—with no exception for districts that do not participate in Title I (Section 1111(a)(3)(C)(i)). NCLB requires states to establish statewide assessment systems that provide consistent annual testing results *for all students in all districts*. Thus, if the state does not comply with the NCLB assessment requirements, districts in California would be precluded from receiving the billions of dollars in federal funds previously mentioned.

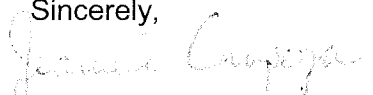
We believe NCLB is a federal mandate. If the commission does not find that NCLB constitutes a federal mandate, then the Commission should recognize federal Title I funds as “offsetting revenue.” The STAR allows California to satisfy federal assessment requirements under NCLB. NCLB required the state to develop performance standards, assessments that were aligned to the standards, achievement levels that provided results based on the state’s performance standards, and so forth. The state spent considerable resources revising the STAR to conform to federal standards. Without the state’s action to identify an assessment that meets NCLB, no district in California would be eligible for Title I funds. As a result, we think the Commission has to either find that NCLB is a federal mandate *or* that Title 1 funds count as an offsetting revenue.

Period of reimbursement?

As stated above, we believe that the STAR program is in fact a federal mandate and therefore not reimbursable by the State. Should the Commission disagree, the issue of period of reimbursement can be discussed at that time, in the context of recent changes to Government Code Section 17556.

If you have any questions regarding this letter, please contact Pete Cervinka, Principal Program Budget Analyst at (916) 445-0328 or Jesse McGuinn, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,


Jeannie Oropeza
Program Budget Manager